

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1224 of 1997

in

SPECIAL CIVIL APPLICATION No 2565 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MOHANBHAI SARADABHAI VASAVA

Appearance:

MR DA BAMBHANIA for Appellants
MR PH PATHAK for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 5, 6
UNSERVED-EXPIRED (N) for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

Date of decision: 01/04/98

ORAL JUDGEMENT

The above Letters Patent Appeal was filed against the judgment and order passed by the learned Single Judge in Special Civil Application No. 2565 of 1997. That petition was filed by the respondents (original petitioners) for an appropriate writ, direction or order declaring inaction on the part of the appellant in not implementing an award passed by the Labour Court (Annexure.A to petition) on 10th October 1995 as illegal, unjust and improper. A direction was sought against the authorities to implement and execute the award.

The learned Single Judge by a judgment and order dt. August 28, 1997 allowed the petition and observed that illegality was committed by respondent authorities in "sitting tight" over the award for a period of more than two years. A direction was, therefore, issued to implement the award forthwith but in no case later than September 5, 1997. Rule was accordingly made absolute.

Against the said judgment, this appeal was filed. It was mainly contended that the learned Single Judge has committed an error of law and he exceeded his jurisdiction in virtually converting the High Court as executing court by exercising extraordinary powers under Art.226 of the Constitution to get an award passed by the Tribunal executed and implemented. It was also stated that the award was passed in 1995, which was decided to be challenged, but there was some delay in filing a petition. The learned Single Judge, in these circumstances, could not have directed the authorities to execute the award. Such a course was open to a workman by resorting to appropriate forum by invoking provisions of Sec.33-C of the Industrial Disputes Act, 1947. It was also stated that not only that the said remedy was available to the workmen, but in fact, they had availed of that remedy and proceedings were pending, but that fact was suppressed by them.

Prima facie the court was satisfied at this contention and hence Letters Patent Appeal was admitted on October 10, 1997 and interim relief was also granted against the order of the learned Single Judge. Meanwhile, however, an applicatin came to be filed being Civil Application No.1788 of 1998 for vacating interim relief which was granted in favour of the appellants-applicants.

Thereafter, Spl.C.A.No.6361 of 1997 came to be filed before the learned Single Judge against the award and the learned Single Judge vide an order dt. January 19, 1998 dismissed the petition and confirmed the award

passed by the Labour Court.

In the facts and circumstances, in our opinion, it would not be proper to keep Letters Patent Appeal pending. It is true that an important question of law is raised in the Appal regarding powers and jurisdiction of this court under Art.226 of the Constitution in connection with implementation of an award passed by a Labour Court. It is also true that a statement was made at the Bar that the workmen have availed of alternative remedy and an application under Sec.33-C of the Industrial Disputes Act is pending. But in view of the fact that the award which was passed by the Labour Court in 1995, is not interfered with by the learned Single Judge and the petition is dismissed, in peculiar facts and circumstances of the case, we are of the opinion that Letters Patent Appeal deserves to be dismissed and is accordingly dismissed.

We may, however, clarify that since we are not deciding the question raised before us, we may not be understood to have confirmed the order passed by the learned Single Judge and as and when such question will arise, it is open to an appropriate court to pass appropriate order. It is also clarified that this order and dismissal of Letters Patent Appeal No.1224 of 1997 will be without prejudice to the rights and contentions of the appellants to challenge the order passed by the learned Single Judge in Spl.C.A.No.6361 of 1997.

Accordingly Letters Patent Appeal is dismissed.
In the facts and circumstances, no order as to costs.

Dt. 1.4.1998. (C.K.THAKKER J.)

(A.L.DAVE J.)